

CAPITAL PLANNING ADVISORY BOARD

Minutes of the Third Meeting of the 2000 Calendar

October 6, 2000

The third meeting of the Capital Planning Advisory Board was held on Friday, October 6, 2000, at 9:30 AM, at the Kentucky Correctional Institution for Women in Pewee Valley. Representative Perry Clark, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Perry Clark, Chair; Taylor Manley (representing James Codell); Kevin Flanery; Lou Karibo; Cicely Lambert; Sam Newcomb; Laurel True; Garlan Vanhook; and Judge Edwin White.

Guests Appearing before the Board: Commissioner Doug Sapp, Department of Corrections; Greg Harkenrider, Governor's Office of Economic Analysis; Ernie Lewis, Department of Public Advocacy and Chairman, Corrections/Alternatives to Incarceration Committee, Kentucky Criminal Justice Council; Warden Doris Deuth, Kentucky Correctional Institution for Women; and Warden Bill Seabold, Kentucky State Reformatory.

LRC Staff: Pat Ingram, Mary Lynn Collins, and Dawn Groves.

Chairman Clark welcomed the Board's new Committee Assistant, Dawn Groves. He noted that Dawn previously worked with the Judiciary Committee, on which he also serves.

Mr. True's motion to approve the minutes of the July 28 meeting was seconded by Mr. Flanery and passed by voice vote.

Chairman Clark said there was one action item for the Board's consideration, a recommendation on the development of a Real Property Management System for Kentucky. He stated that the Board recommended such a system in its *1998-2004 Statewide Capital Improvements Plan*, and funds were appropriated by the 2000 General Assembly so that consistent information can be collected on all state-owned facilities. He said the Department for Facilities Management is currently working on the database.

At Chairman Clark's request, Pat Ingram, CPAB Staff Administrator, reviewed the draft recommendation, as follows:

The Capital Planning Advisory Board appreciates the attention given by the Governor and General Assembly in the 2000-02 budget to its recommendation regarding the need for a real property management system for state-owned facilities and property.

The Board believes a real property management system that is appropriately designed and implemented will benefit officials at various levels and in various areas of state government, and recognizes that differing needs of these officials will impact the data elements included in the system.

Moreover, the Board believes there needs to be a ***single repository which serves as the official source of data on all state-owned / administered facilities and real property*** and the system (database) now being developed by the Department for Facilities Management should be designated as that official repository.

Making changes to data in the system should be as easy as possible so that users can have access to current, up-to-date information. However, the Department should also incorporate into the system measures to ensure that the data are accurate and consistent (e.g., clear definitions, periodic audits).

The Board's primary use of the system will be to provide information to assist in its evaluation of projects 1) proposing the construction of new state-owned space and 2) proposing the maintenance and renovation of existing state-owned space. The system should also assist agencies in providing justification and support, where appropriate, for such project proposals.

As such, it would be important for the system to include data elements which address the following: building structure, mechanical systems, use, status, occupants, and condition.

For those elements for which the data are not quantifiable, the system should utilize categories that can be clearly defined.

The Department for Facilities Management should also consider incorporating into the system the data elements as recommended in the 1999 report of the Task Force on Historic Properties.

In response to a question, Chairman Clark said the intent was for the database to include all state properties. Judge White asked whether the Department for Facilities Management wanted to take on this additional responsibility. Commissioner of Facilities Management Armond Russ said yes, because state agencies and the legislature constantly request such information. Also, there is a need to be able to forecast long-term renovation costs. He said the existing database does not meet these needs.

Mr. Flanery noted that the Department is trying to get as much input as possible from those actually affected, including both tenants of the buildings and users of the information.

Mr. True asked if the draft recommendation addressed wiring for technology in the facilities; Ms. Ingram replied that it did not. Commissioner Russ said the Governor's Office for Technology (GOT) maintains information about technology. Chairman Clark noted that as long as Facilities Management is discussing this with GOT, it does not need to be in the recommendation at this time.

Mr. Karibo's motion to approve the recommendation on development of a Real Property Management System was seconded and passed by voice vote.

Chairman Clark then introduced Doug Sapp, Commissioner, Department of Corrections, and thanked him for the opportunity for the Board to meet at the Kentucky Correctional Institution for Women (KCIW). Chairman Clark noted that after the presentations this morning, the Board would tour KCIW and the Kentucky State Reformatory (KSR).

Chairman Clark said today's discussion will address various Corrections issues in greater detail than time permits during the biennial planning process. Those issues include facilities, population projections, and alternatives to incarceration.

After Commissioner Sapp welcomed the Board, various Department of Corrections staff and others in the audience were introduced. He explained that donated funds were used to finance the chapel in which the Board is meeting and that the building is used for many different activities.

Commissioner Sapp began his presentation with an overview of the Department of Corrections, including its mission statement, organizational structure, and General Fund appropriations and personnel caps for the 2000-02 biennium.

Commissioner Sapp stated that as of August 31, there are 2,741 employees at the institutions and 316 vacancies, most of which are nurses or correctional officers. To address some of the needs in this geographic area, housing is provided in the Tower at KSR so that staff can be hired from eastern Kentucky to work three-day, 12-hour shifts. The Department is also negotiating with a local motel to lease additional rooms. Commissioner Sapp said the shortage of nurses is due to the state salary schedule not being competitive with local Oldham and Shelby county communities. The Department

has to use employment agency nurses, which is a more expensive approach. Increased compensatory time and overtime costs are also being incurred by state personnel.

In response to Chairman Clark's question, the Commissioner replied that while the 2000 General Assembly increased their pay, salaries for security officers are still not competitive with positions that are available elsewhere in the Shelby and Oldham County area. He said the difficult nature of the work can also be a problem.

Commissioner Sapp noted that besides addressing growth issues relative to prison facilities, the Department must also address the maintenance needs of its aging physical plant. He pointed out that the average age of the 12 existing prisons is 51 years.

Commissioner Sapp said that, as of September 30, the incarcerated felony count was 15,624, of which 11,251 are in state facilities and the rest are in county jails. The average cost to incarcerate was \$45.96 per inmate per day in FY 1999/2000. In response to Judge White's question, Commissioner Sapp said the per day figure includes all costs (including central office) except debt service.

In his overview of inmate programs, Commissioner Sapp stated that approximately 89% of all eligible inmates work in the community or at the prison (e.g., in the farm program or industry operations). Approximately 5,400 inmates are in educational programs (Adult Basic Education, GED, vocational and college programs).

Commissioner Sapp said approximately 1,100 felons are enrolled in the Substance Abuse Program (SAP), approximately 700 felons are enrolled in the Sex Offender Treatment Program (SOTP), and approximately 3,800 inmates are receiving mental health treatment each month. He said drug or alcohol was either a contributing or a main factor for approximately 80% of the incarcerated felons today. Additionally, a growing proportion of the inmate population has been incarcerated for sexual offenses. Those receiving mental health treatment range from the chronically mentally ill to those who can function in the general population with some medical assistance. Commissioner Sapp said inmates closer to an appearance before the Parole Board are given preference over others for available spaces in the SAP or SOTP. He said the Department is constantly seeking funding for treatment programs and that there is also a critical need for more community-based programs to provide a linkage for offenders who have been released from an institution.

Judge White stated that he receives a lot of correspondence from inmates wanting to enter the SAP program, but there are no available spaces. In response to his question about how many more spaces are needed, Commissioner Sapp said if the number were tripled they could all be used.

Chairman Clark asked what percentage of the inmate population was incarcerated for a drug offense only. Commissioner Sapp said 20 to 25 percent of the

new commitments are expected to be for drug possession or trafficking. Judge White said this does not include those with drug possession charges that are probated to treatment programs in the local communities; the Department of Corrections pays for these programs and monitors the individuals through its Division of Probation and Parole.

Profiling the inmate population, Commissioner Sapp said the median age is 33 years old and the median sentence is 10 years. The population is 93% male and 7% female. Among the population, 63% are white, 36% are black, and 1% are other. Commissioner Sapp noted that the increased Hispanic population has made it necessary to employ interpreters.

In terms of crimes committed, Commissioner Sapp provided the following statistics: violent offenses – 40%, property offenses – 22%, drug offenses – 21%, sex offenses – 12%, and other offenses – 5%. Jefferson, Fayette and Kenton Counties produce 40% of the commitments.

Commissioner Sapp said the 12 state owned and two private contract prisons are dispersed across the state and another state facility is being planned in Elliott County.

Commissioner Sapp explained that the Division of Probation and Parole, under Community Services and Local Facilities, is organized into 13 supervisory districts. At the local level, there is a probation and parole office in each of the 57 judicial circuits. The program currently has several vacancies due to additional positions that were authorized by the 2000 General Assembly. He said turnover is generally not a major problem with these positions. The average daily cost of supervision in the community for FY 1999/2000 was \$3.14 (compared to the \$45.96 cost for incarceration). As of August 31, there were 20,465 probationers, parolees and misdemeanants under community supervision. Commissioner Sapp explained that the duties of this division have increased in recent years; they include the completion of Pre-Sentence Investigation Reports with an analysis of treatment options, registering of sex offenders, and collecting restitution payments. He said in some places supervising staff may handle 100-150 cases; an effort is being made to reduce that to 80-85.

Commissioner Sapp explained that the Division of Local Facilities, also under Community Services and Local Facilities, ensures compliance with programmatic and jail standards across the state. It is also responsible for housing Class D, Community Service and medium custody inmates in local jails and inmates and parolees in halfway houses. He displayed a map identifying the county jails that hold Class D inmates. In response to a question from Mr. Newcomb, Commissioner Sapp said the majority of Class D inmates in the state system rather than local jails are there because of medical reasons, while some others are sex offenders or considered to be security threats. He said that local jailers also do not like to house Level 3, Class D inmates because they cannot be allowed outside of the jail.

Referring to Local Jail Support, Commissioner Sapp explained that it consists of four programs to allocate funds for county jail operations. They are the Jail Allotment (a statutory formula), Restricted Medical (indigent inmate medical costs), Catastrophic Medical (for medical claims over \$2,000 for non-state inmates), and Jailer Expense (for completion of training).

Commissioner Sapp next listed the eight Performance Criteria being used by the Department as follows: reduce recidivism rate, reduce number of parole violators, reduce escapes and walk-aways, reduce assaults on staff, reduce personnel vacancies, control cost to incarcerate, maximize Kentucky Correctional Industries revenues and employment of inmates, and reduce the backup of state inmates in local jails.

In response to Mr. True's questions, Commissioner Sapp said video surveillance is used in the prisons and that privacy rights have not really been an issue. He noted that as military spending has slowed, companies have shifted their focus to developing technology for corrections and that such technology is changing very rapidly.

Mr. True also asked about the use of private prisons in Kentucky. Commissioner Sapp said the two private prisons are performing adequately. He attributed this to the monitoring done by the Department of Corrections and to tightly written contracts that require, among other items, the private prisons to be accredited by the American Correctional Association.

Relative to Mr. True's questions about medical costs incurred by the Department, Commissioner Sapp identified three factors currently impacting those costs - the aging prison population, hepatitis C, and mental health issues. In response to a further question from Mr. True, the Commissioner noted that the General Assembly has allowed for medical paroles but these have proven difficult to accomplish given that inmates often do not have a support system or financial resources outside of the institution to address their conditions and victims often oppose their release.

Mr. Karibo asked for additional information on the letter recently sent to county officials about local jail construction. Commissioner Sapp explained that the primary purpose of the letter was to ask local governments to consider all of the costs involved before deciding to construct a local jail. He said construction costs are a minor factor and that operating costs and liability issues should also be a consideration.

Judge White said if adequate funding is not provided to address the increased need for alternative programs, Kentucky may have some serious problems with the Class D program in the future. He asked what would happen if a federal lawsuit required that the Class D program be ended. Commissioner Sapp said it would take years for the state to recover from such a decision, so they are trying to put standards and requirements in place for local jails that house state inmates.

Commissioner Sapp next introduced Greg Harkenrider with the Governor's Office of Economic Analysis (GOEA) who explained that the development of prison population

projections is a joint effort between GOEA and the Department of Corrections. Mr. Harkenrider said Kentucky currently uses the PROPHET Model which is widely recognized and utilized by over one-half of the states. The Model uses several inputs that are easily tracked (e.g., good time accrued, current inmates, legal and judicial actions, parole assumptions and history, parole forecast) as well as a projection of new commitments to get a forecast of future prison populations. Projecting new commitments can be difficult. The model recommends using a five-year average, but Kentucky decided to project intake by offense rather than using an aggregate figure. Adjustments were made for seasonal variations by using a moving average.

Using data back to 1980, Mr. Harkenrider noted that there was a correlation between violent offense and property offense commitments. These also mirrored changes in the economy - increasing during times of recession. He also noted a correlation between drug offense and sex offense commitments from 1980 through 1988, but beginning in 1988, drug commitments increased dramatically.

Mr. Harkenrider explained that the model had been doing well forecasting 500 to 1,200 commitments per year but in FY 1998/99, growth in the prison population slowed such that the model developed an "overforecasting bias." GOEA noticed a pattern to the bias and to calibrate the model, adjustments were made based on the historical errors.

In response to Mr. True's request to identify why the projections had been inaccurate, Mr. Harkenrider replied that one significant reason was House Bill 455, the Governor's Crime Bill, which was passed by the 1998 General Assembly. Commissioner Sapp said four or five years ago Kentucky began predicting total population - both community and incarcerated. While growth in the incarcerated population leveled off, the total population projections were only off by 0.5% because of the increase in community caseloads (probated and paroled offenders).

Commissioner Sapp said that it is extremely important to update projections every two years, but accuracy diminishes beyond that two-year timeframe. The Department's projections are done every two years prior to development of the six-year capital plan and the biennial budget request. Commissioner Sapp said the good economy has been a factor in the reduction of commitments recently, but he said the wild card is that even people who are working may commit drug offenses.

Mr. Harkenrider said the projections attempt to take economic conditions into account. He noted also that when the economy declines, it means decreased revenues for the state, but the need for increased expenditures in areas such as Medicaid and corrections.

In response to Chairman Clark's question about new prison construction, Commissioner Sapp said the Department had expected to request two new facilities from the 2000 General Assembly, but that was scaled back when the number of commitments leveled off.

The 2000 General Assembly provided \$87.4 million for 896 beds in Elliott County and, depending on the population projections, the Department will probably request another 896 beds in Knott County from the 2002 General Assembly. These will be designed as expandable facilities with all support areas to be constructed under the first authorization so that when expansion is required, only the housing units will have to be added; it will cost approximately \$38 million to double the size of each facility. Groundbreaking for Elliott County prison will be in the summer of 2001 with completion in 2003. If necessary, expansion of both facilities would be complete in 2006, and the Department would have to seek a new site for further prison expansion/construction.

Judge White said these funds could be used to address state office building needs in Frankfort and science lab needs at the regional universities, and the state should be looking at options other than more prison construction.

Chairman Clark asked whether the new construction would result in any closings of existing older facilities. Commissioner Sapp said that was not in the Department's plans. He added that the bed space is needed, and even the oldest facility, Eddyville, has been made very functional due to improvements resulting from the Consent Decree in the 1980's.

Mr. Flanery asked whether the rise in drug-related commitments was in response to legislative changes. He said one would think that getting drug offenders off of the street would result in a decrease in other offenses. Commissioner Sapp said increased penalties had played a role in the rise of drug-related commitments. But he noted that the figures do not reflect the significant number of probated or paroled cases; unless there are aggravating circumstances, most of those arrested for possession do not enter the prison system. The increase reflects people arrested with hard drugs or drug trafficking, which have harsher penalties and longer sentences.

Chairman Clark thanked Mr. Harkenrider for his presentation. Mr. Ernie Lewis, Commissioner of the Department for Public Advocacy and Chairman of the Kentucky Criminal Justice Council's (KCJC) Corrections/Alternatives to Incarceration Committee (CAIC), then began his presentation.

Mr. Lewis said Kentucky is an "indeterminate sentencing" state – the penal code sets the term of years (1 to 5, 5 to 10, 10 to 20, 20 to life, or capital); trial judges sentence (based on a plea or a jury verdict) and determine whether the person is sent to a correctional facility, probated, or given an alternative sentence; and the Parole Board determines how much time is to be served. Sentencing practices in Kentucky represent an interplay between representatives of the three branches of government; there is no overall philosophy or guiding principle.

Mr. Lewis said that KRS 533.010 presumes alternative sentencing. As amended by the 1998 General Assembly, it attempted to move Kentucky to a philosophy of incarcerating violent offenders and not incarcerating nonviolent offenders. The use of

alternatives for nonviolent offenders would make space available in the prisons for violent offenders who, under HB 455, must serve 85% of their sentences.

According to Mr. Lewis, various judges, prosecutors, and public advocates do not believe the intended changes in sentencing practices have occurred. He said in the past 23 years, it has become much more difficult for inmates to get parole; this contributes to some of the geriatric problems in the prisons. He also said the construction of many new county jails, which can house Class C and D felons, has created an incentive to incarcerate.

Nationally, Mr. Lewis said Kentucky is one of 36 states with "indeterminate sentencing," and other states have "structured sentencing." In Kentucky, counties have responsibility for misdemeanants and the state has responsibility for felons, while some states have a consolidated system where both are committed to the state and misdemeanants have access to the same type of treatment as felons.

Mr. Lewis said Kentucky's prison population increased from less than 5,000 in 1997 to almost 16,000 in 2000; that increase is similar to the trend nationally. However, Minnesota, with a population similar to that of Kentucky, has only 5,000 inmates. He said that 43% of those in Kentucky prisons would be eligible for alternatives to incarceration.

Nationally, according to Mr. Lewis, correctional expenditures grew from \$4.2 billion in 1980 to \$21.2 billion in 1994; however, programming (which includes treatment) funds declined from 19.9% of the budget in 1980 to 16.6% today. He did not have comparable figures for Kentucky.

Mr. Lewis said Kentucky has numerous alternatives to incarceration available in the statutes, and most stakeholders in the system agree with the concept. The primary alternative is probation and conditional discharge. Other alternatives are: pretrial diversion (a person pleads guilty, and the conviction is eliminated if he is straight for a period of time), shock probation (after serving 30 to 180 days, a person may be released and placed on conditions), prerelease probation (the trial judge can reopen a case and release a person on probation), home incarceration, drug court, halfway back and intensive halfway back programs, halfway houses, work release, split sentences (after serving up to 12 months in a county jail, the person is placed on probation or on conditions), community corrections (jurisdictions become involved and decide what is appropriate), residential treatment programs for drug and alcohol abuse, community service, probation monitoring by private agencies, parole, geriatric parole, and faith-based alternative sentencing.

Mr. Lewis next cited various barriers to having an effective alternatives to incarceration program in Kentucky: insufficient funding for the community corrections program; too few probation and parole officers; disparate sentencing practices across jurisdictions; statutory restrictions on probation and parole which preclude their use in some instances; little programming for misdemeanants and insufficient programming for

class D felons; lack of resources for the development of alternative sentencing plans tailored to individual needs; inadequate resources for treatment programs; too much local jail capacity for Class C and D felons; inadequate public support due to a lack of education about alternative sentencing; and the lack of a uniform policy-setting body in Kentucky.

Referencing Mr. Lewis' statement about 43% of the prison population being eligible for alternatives, Mr. True asked whether this means the law is not being followed. Mr. Lewis said the statutes provide for judges to exercise discretion in sentencing and some judges are not receptive to the use of alternatives. He noted that he had opposed some portions of HB 455 because it mandates that violent offenders serve 85% of their sentence while making alternatives for nonviolent offenders discretionary. Mr. Lewis also noted that victims usually do not believe justice has been done unless the perpetrator is incarcerated.

Judge White asked how many of those currently incarcerated had previously been serving an alternative sentence. He said lack of funding for alternatives is the major problem. Specifically, he noted that those who are dismissed from private treatment programs are then incarcerated because there are no state-run treatment options outside of the jails. He said crack cocaine and methamphetamines are major problems that must be addressed.

Chairman Clark said there must be the will within the General Assembly to proceed with alternatives since so many have been provided in statute. Mr. True asked what the General Assembly's response would be to a proposal to build state-run drug treatment centers rather than a new prison. Chairman Clark said it is not a farfetched idea and that the General Assembly and the public are beginning to understand the problem.

Chairman Clark thanked Mr. Lewis for his presentation. There being no further business to come before the Board, the meeting was adjourned at 12:30 for lunch and for tours of KCIW and KSR.